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The United States and the Saint Germain Treaties¹

DURING the past three years the President has submitted to the Senate for its approval the text of four important international treaties which (aside from the Poison Gas Protocol) have never been reported out by the Committee on Foreign Relations.

The treaties are as follows:

1. *Convention Revising the General Act of Berlin and the General Act of Brussels, signed at Saint Germain, September 10, 1919. Transmitted to the Senate January 12, 1926.*

This convention guarantees certain rights to the United States in regard to trade and missionary enterprise in Africa.

2. *Convention Relating to the Liquor Traffic in Africa, signed at Saint Germain, September 10, 1919. Transmitted to the Senate May 22, 1928.*

This convention prohibits the entrance of trade spirits into Africa.

3. *Convention on the International Trade in Arms, signed at Geneva, June 17, 1925 (plus a Poison Gas Protocol). Transmitted to the Senate May 22, 1928.*

This convention prohibits the sale of war arms to individuals, provides for publicity in regard to the sale of such arms to governments, and places the traffic in all kinds of arms in a special zone under strict control.

4. *The Slavery Convention, signed at Geneva, September 25, 1926. Transmitted to the Senate May 22, 1928.*

This convention provides for the progressive abolition of domestic slavery and imposes certain restrictions upon forced labor.

As a result of the Senate's delay, other governments have held up their ratifications and the Convention on the International Trade in Arms has not gone into effect. The other treaties have entered into force between the parties which have ratified, while the United States remains a party to pre-existing engagements which may or may not be valid at the present time.

1. While the Arms Traffic Convention of June 17, 1925 and the Slavery Convention of September 25, 1926 are not technically Saint Germain Treaties, they are included under this heading because they have been framed to supplement or replace certain of the Saint Germain Conventions.

This report examines the objects of these conventions and the obligations which their ratification would impose upon the United States Government. The two 1919 conven-

tions are confined to the African continent; the 1925 International Trade in Arms Convention and the 1926 Slavery Convention are, however, world-wide in scope.

PRESENT STATUS OF THE TREATIES

The first two of these conventions were signed by the United States, Belgium, the British Empire, France, Italy, Japan and Portugal. Ratifications are deposited in the archives of the French Government. Both conventions have been ratified by all the signatories except Italy and the United States.

The Convention on the International Trade in Arms was signed by 34 governments, including the United States, and it enters into effect when the ratifications of 14 governments have been deposited with the French Government. By September 1928 only France, China and Venezuela had ratified, while Liberia had adhered; the Poison Gas Protocol, which comes into force for each power upon ratification, had been ratified by Austria, France, Italy and Venezuela, while it had been acceded to by Liberia and Russia.

The Slavery Convention was signed by 36 governments, during the League of Nations Assembly in 1926. By September 1928 it had been ratified by 18 governments and acceded to by seven governments. Among other States, neither Abyssinia, France, Liberia, or Persia, has ratified. The German Reichstag ratified on December 14. The convention comes into operation for each State on the date of the deposit of its ratification or accession. Unlike the first three conventions, the instrument of ratification or accession shall be deposited with the Secretary-General of the League of Nations. The United States was not a signatory to the Slavery Convention, but it has been invited to accede.

The Liquor Traffic Convention establishes a Central International Office under the control of the League to collect documents with respect to the liquor traffic controlled by the convention. Although the original International Trade in Arms Convention of 1919 provided for the establishment of an-

other such office, the final convention adopted in 1925 contains no such provisions, apparently to satisfy the wishes of the United States.²

The Liquor Traffic Convention requires the parties to publish and send to the League an annual report showing spirits imported into their territories in Africa. The International Trade in Arms Convention requires the publication of periodic returns in regard to the war arms trade as well as of relevant legislation. The Slavery Convention obliges parties to communicate to each other and to the Secretary-General of the League any laws and regulations enacted to put the convention into force.

All four conventions provide that disputes relating to their application which cannot be settled by negotiation shall be referred either to arbitration or to judicial settlement. The two 1919 conventions provide that the disputes shall be settled and submitted to an arbitral tribunal in conformity with the Covenant of the League.³ The other two conventions provide that disputes over interpretation or application shall be referred either to the Permanent Court of International Justice, or to a court of arbitration. For those States who are parties to the December 16, 1920 Protocol of Signature of the Permanent Court, reference to the Court is obligatory.

The Convention of 1919, Revising the Acts of Berlin and Brussels, provides (Article 15) that the signatories will re-assemble at the expiration of ten years from the coming into force of the convention in order to incorporate in it such modifications as experience may have shown to be necessary. The Liquor Traffic Convention (Article 9) provides that modifications may be introduced by common agreement after

2. Cf. p. 433.

3. As far as the United States, a non-Member of the League, is concerned, this obligation could probably be construed to mean any form of arbitration agreeable to the parties. Cf. Article 17 of the Covenant.

five years. The International Trade in Arms Convention (Article 39) provides that after three years the convention may be revised at the request of one-third of the parties, by addressing the French Government.

THE CONFERENCE OF BERLIN

In a sense, the four treaties now before the Senate of the United States are an outgrowth of the Conference of Berlin, held in 1885 in connection with the opening up of Central Africa. The Act of Berlin was designed to insure to its parties the benefits of the open door and equality in missionary rights. Although it contained an article in regard to the protection of natives, the act was primarily designed to safeguard the white man's interests. Five years later an anti-slavery conference of primary concern to the African native population, was held in Brussels. The Act of Brussels (1) provided for the suppression of the interior slave trade and authorized the search of certain vessels in a maritime zone which included the Persian Gulf and the Red Sea in order to suppress this trade, (2) prohibited the sale to natives of firearms except under strict government control, and (3) prohibited the sale of spirits in those districts where the use of spirits did not then exist—notably in Moslem territory. Elsewhere, States agreed to impose certain duties on liquors which were subsequently increased. The United States signed but did not ratify the Act of Berlin. It became a

party to the Act of Brussels, subject to a reservation of the Senate to the effect that the United States disclaimed any interest in the possessions of the other powers on the African continent, and any approval of their lawfulness or wisdom.⁴ The Act of Berlin was signed by 14 governments; the Act of Brussels, by 17 governments.

In February 1907 the United States Senate passed a resolution introduced by Senator Lodge, advising the President in case he found that the allegations against the Congo Free State were correct to cooperate with the powers signatory to the Act of Berlin "for the amelioration of the conditions of such inhabitants."⁵ In a note of January 11, 1909 the United States invoked the Brussels Act in protesting against the concessions régime in the Congo Free State.

At the Paris Peace Conference the Allied Governments, "wishing to ensure by arrangements suitable to modern requirements the application of the general principles of civilization established by the Acts of Berlin and Brussels," proceeded to revise these two acts. The outcome was three separate conventions: (1) the Convention Revising the Acts of Berlin and Brussels, (2) the Convention in Regard to Liquor Traffic in Africa, (3) the Convention on the International Trade in Arms. All three conventions were signed at Saint Germain on September 10, 1919.⁶ As a result of these conventions, the Acts of Berlin and Brussels were abrogated between the ratifying powers.

CONVENTION REVISING THE ACTS OF BERLIN AND BRUSSELS

This convention provides for the open door in Central Africa,⁷ both in trade and missionary enterprise, but in certain respects the act is less precise in its guarantees than the Act of Berlin, which is now considered abrogated. Under the Act of Berlin, as modified in a declaration of 1890, governments could impose import duties of

only 10 per cent. But this restriction was removed in the Act of 1919, although the principle of non-discrimination between nationals of the administering power and nationals of other signatories remains.

The Act of Berlin provided that no government could grant a monopoly in matters of trade. Nevertheless, both the French and the Congo Free State Governments granted

4. Malloy, *Treaties of the United States*, Vol. II, p. 1391. The text of both the Berlin and Brussels Acts may be found in Buell, *The Native Problem in Africa*, Vol. II, p. 891, 908.

5. *Congressional Record*, Vol. 41, p. 3040. Buell, *Native Problem in Africa*, Vol. II, p. 441.

6. Under Article 126 of the Treaty of Versailles, Germany agreed to accept these conventions.

7. I. e., it applies to the conventional basin of the Congo—which includes parts of the French Cameroons, Portuguese Angola, and French Equatorial Africa. The zone also includes Kenya, Uganda, Nyasaland, Tanganyika, parts of Northern Rhodesia, Italian Somaliland and Portuguese East Africa as far south as the Zambesi.

exclusive concessions in raw materials—such as rubber—upon public lands, to the detriment of outside traders and the native population. The British and American Governments stated that such concessions in their opinion violated the Act of Berlin and other agreements; but the French and Free State Governments replied that liberty to trade was different from liberty to alienate property. The latter was a sovereign right which the Act of Berlin did not pretend to control. Both governments declined to submit the question to arbitration.⁸

The Revised Act of Berlin would seem to decide this difference in favor of the French and Free State contention. Article 4 provides that each State may “dispose freely of its property” and “grant concessions for the development of the natural resources of the territory,” subject to the provision that there shall be no discrimination between the nationals of States parties to the convention.

The Act of Berlin guaranteed freedom of conscience and the right to organize religious missions in the most sweeping terms. But these rights are qualified in the 1919 convention by a statement to the effect that this guarantee is “subject only to such restrictions as may be necessary for the maintenance of public security and order, or as may result from the enforcement of the constitutional law of any of the Powers exercising authority in African territories.” Does this latter provision mean that any government in Africa may enact legislation barring foreign missions? If so, American missionary rights would not seem to be adequately protected. These guarantees, moreover, do not explicitly include the right of missionaries to conduct schools or to use the native language in their work. A number of governments in Africa have imposed restrictions in these and other respects upon American missionary societies.⁹

In the Revised Act of Berlin the governments exercising authority in Africa promise to “continue to watch over the

preservation of the native population and to supervise the improvement of the conditions of their moral and material well-being. They will, in particular, endeavor to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea.” Nevertheless, the detailed machinery for the suppression of the African slave trade established in the Act of Brussels is discarded and no provision is made in regard to the arms and liquor traffic or forced labor.

The arms and liquor traffic were, however, made the objects of separate conventions at Saint Germain, while slavery and forced labor were made the object of a League of Nations agreement signed in 1926.

Since the United States has no territories in Africa, the Revised Act of Berlin, if ratified, would not seem to impose any concrete obligations upon the American Government. It offers, however, a certain protection to American trade and missionary interests and it would enable the United States to participate in the African conference to revise the Saint Germain agreement, which will presumably be held in 1931. Several opinions have recently been expressed that at the forthcoming African conference the open door provisions should be set aside in order to make possible preferences in favor of British trade.¹⁰ Obviously the abrogation of the open door features would affect American trade with Africa.

While American interests receive less protection under the Revised Act of 1919 than under the Act of Berlin of 1885, it may be argued that the latter act no longer exists.¹¹ Whatever the outcome of such an argument may be, difficulties will obviously arise if the United States attempts to stand upon rights derived from an 1885 convention when other governments who hold territory in Africa have accepted a new agreement.

8. Under the Revised Act they would be required to do so, cf. p. 426.

9. Cf. Buell, *The Native Problem in Africa*, Chap. 44, 68, 80, 92; and Buell, “The Struggle in Africa,” *Foreign Affairs*, (New York) October, 1927.

10. Cf. the question of Sir I. Power and the reply of Mr. Amery, and the resolution of the East Africa Governors, *House of Commons Debates*, March 19, 1928. Buell, “The Struggle in Africa,” *Foreign Affairs*, October, 1927.

11. I.e., the war may have terminated it, or the doctrine of *rebus sic stantibus* may be operative.

CONVENTION RELATING TO THE LIQUOR TRAFFIC IN AFRICA

The second convention signed at Saint Germain prohibits the importation of "trade spirits" into Africa, with the exception of Algiers, Tunis, Morocco, Libya, Egypt and the Union of South Africa. It thus goes further than the Act of Brussels, which provided generally only for the imposition of duties. The Saint Germain convention also requires the imposition of a duty upon all distilled beverages of not less than 800 francs per hectolitre of pure alcohol, whether "trade spirits" or not.

Following the signature of this treaty, a dispute arose over the meaning of the term "trade spirits." Both the British and French Governments originally interpreted it to include Dutch gin—a drink put up in small bottles and consumed only by the native population. The preamble of the convention indicated that the signatories intended to prohibit spirits which not only included injurious foreign materials, but which also were sold so cheaply as to stimulate native consumption. Since the 1919 convention did not state that the 800 franc duty should be paid in gold, duties became higher in British territory than in French territory, with the depreciation of the franc, and the British authorities asserted that as a result traders imported large quantities of liquor into French ports and then smuggled them through the interior into British territory, while British natives crossed into

adjoining French territory to purchase cheap liquor and to sell their goods. Believing that they were losing trade by this procedure, the British Government adopted a new definition of "trade spirits" in 1921 which readmitted Dutch gin to their West African territories. Such gin contains no injurious foreign materials, but is prepared only for native consumption.¹² As a result of this new interpretation, apparently the only difference between the situation today and before the war is that the duty on spirits of all kinds in British territory has been increased to 25 shillings a gallon.¹³ The question of whether or not the new British interpretation conforms to the 1919 convention has not been settled.

Since the United States has no territory in Africa, the ratification of this convention would not apparently oblige the American Government to enact any additional legislation or to supply any information to the International Office established under the act.¹⁴ On the other hand, ratification would be in keeping with the desire so frequently expressed by the United States to advance the welfare of so-called backward peoples, and in keeping with American efforts to combat the evils of the liquor traffic. Ratification would also give the United States the right to participate in any revision of this convention and to state its interpretation of the term "trade spirits."

CONVENTION ON THE INTERNATIONAL TRADE IN ARMS

At the close of the World War, great stores of arms and ammunitions had been accumulated in various countries, and it was to the self-interest of many concerns, if not governments, to dispose of these arms regardless of the purpose for which they might be used. Few if any of the countries where revolution has been frequent, such as China or various Latin American countries, produce the arms with which revolutionists are supplied. Such revolutionists usually must purchase arms from foreign manufacturers. The existence of such a trade may be implied from statistics published by the League of Na-

tions Secretariat. For the year 1925, arms and munitions of war to the value of \$55,762,154 were exported from various countries, but according to the official statistics countries showed imports of arms and munitions of war to the value of only \$45,244,457.¹⁵ Presumably this difference of \$10,500,000 represents arms which are sold not to governments but illicitly to individuals for revolutionary purposes and

12. In British East Africa the British Government has laid down the rule of complete prohibition in so far as the native population is concerned.

13. Cf. Buell, *The Native Problem in Africa*, App. XLVI.

14. Cf. p. 426.

15. League of Nations, C. 26 M. 13. 1928 IX, p. 151. *Statistical Information on the Trade in Arms, Ammunition and Implements of War*.

which do not therefore appear in the import statistics. The value of the arms imported into China increased from \$378,231 in 1921 to \$7,199,438 in 1925. In the latter year nearly 53% of these imports came from Germany, 17.8% from Norway and 14.1% from Italy. In 1926 Great Britain provided 25.5% of the world exports of arms and ammunition, the United States 18.1%, Czechoslovakia 14.3%, Germany 12.1%, and France 10.3%¹⁶

Before the World War, the Brussels Act imposed severe restrictions upon the acquisition of any kind of arms by the natives of Africa and a number of agreements, aimed to keep arms out of the hands of the revolutionists in other countries, had been made.¹⁷

In the Convention on International Trade in Arms, signed at St. Germain in 1919, the signatory powers not only attempted to preserve the special system of supervision for parts of Africa first established in the Act of Brussels, but also attempted to prohibit the sale of war arms to any individuals and to control the sale of such arms to governments by a system of license and publicity. Had this convention been ratified and enforced, the shipment of arms from many countries to revolutionists would probably have come to an end.

The Covenant entrusted the League of Nations with "the general supervision of the trade in arms and ammunition with the countries" where such control is necessary; and in 1920 and 1921 the Assembly urged ratification of the Saint Germain convention. By 1925 thirty-four governments had replied. Of these eleven had ratified and four others expressed their willingness to do so. But the more important governments declared in effect that they could not ratify unless the United States, a leading arms manufacturer, did so.

THE UNITED STATES' OBJECTIONS

On July 28, 1922 the American Government, which had signed the 1919 conven-

tion, stated that while it was in cordial sympathy with the efforts to restrict the arms traffic, it could not approve of the provisions of the Saint Germain convention. It did not state, however, what its objections were, and the Third Assembly, which met the following September, passed a resolution urging the United States to state its objections and to make any proposals as to how they might be removed. On May 1, 1923 the Acting President of the Council wrote to the Government of the United States calling attention to the Assembly resolution. The United States finally replied on September 12, 1923, stating its objections as follows: (1) the Saint Germain convention imposed no restrictions upon the general limitation of armaments by governments, but merely created a system of control to prevent arms from getting into the hands of unauthorized individuals; (2) the convention would require the United States to prevent shipments of arms to States not parties to this convention, such as those in Latin America; (3) the convention would call for the enactment of legislation to make it operative, including the imposition of penalties. The United States Government was "not in a position to undertake to obtain the enactment of such legislation"; (4) the provisions of the convention "relating to the League of Nations are so intertwined with the whole Convention as to make it impracticable for this Government to ratify, in view of the fact that it is not a Member of the League of Nations."

THE CONVENTION OF 1925

Following the receipt of this communication, the League set its machinery at work to draft a new convention to meet the objections of the United States. The United States was invited to cooperate with the Temporary Mixed Commission on armaments for this purpose and in February 1924 the United States Minister at Berne informed the Secretary-General of the League that he could attend the meetings of this commission as an observer. As the result of discussion within the Temporary Mixed Commission, a new draft agreement was prepared which was placed before the

16. For some reason the arms exports of Czechoslovakia increased from \$234,789 in 1925 to \$3,427,557 in 1926. *Ibid.* p. 146. About nine-tenths of her 1926 exports were divided between Jugoslavia and Turkey. (*Ibid.* p. 138.)

17. For a summary of other arms traffic agreements, cf. Buell, *International Relations*, p. 266.

International Conference for the Supervision of the International Trade in Arms and Ammunition, held in Geneva, May 4—June 17, 1925. The United States delegates were Hon. Theodore E. Burton and Minister (later Ambassador) Hugh S. Gibson. As finally signed, the Convention on the International Trade in Arms has for its purpose the prohibition of the export of arms and implements of war to private individuals, but it allows the export of such arms, under condition of license and publicity, to governments.¹⁸

Explosives, ordinary arms and ammunition not suitable for military purposes may be freely exported and imported without restriction.¹⁹ In other words, the United States, if it ratifies this convention, must not allow the sale of machine guns, cannon or armored cars, etc., to private individuals in China, Mexico or elsewhere,²⁰ but it may allow the sale of such articles to the Chinese or Mexican Governments.

A second purpose of the convention is to control the export of war arms to governments by a license system and publicity. When a government wishes to import war arms it shall present a written order to the competent authorities of the exporting country; and individuals wishing to export war arms to governments must receive permission to do so from their governments in the form of a license or export declaration giving a description of the articles, and the name and address of the exporter, the importing consignee and the government authorizing the import. This procedure is suspended in time of

war—thereby solving the question of whether a license by one government authorizing the sale of arms to a belligerent conflicts with the rules of neutrality.²¹

The parties undertake to publish a quarterly return of their foreign trade in war arms and arms capable of warlike use. They also undertake to publish the text of all legislation dealing with the export and import of such articles.²²

The Saint Germain convention had provided that an International Office established by the League should publish such information, a provision retained in the convention drafted by the Temporary Mixed Commission. But largely because of American unwillingness to use League machinery, the 1925 convention failed to provide for any international office or for an annual report to the League Council on the working of the convention. It was understood, however, that the arms statistics published by each government might be periodically brought together by the League Secretariat. This is already done in an annual volume of statistical information on the Trade in Arms, Ammunition and Implements of War. In a certain sense, therefore, the League Secretariat serves as the proposed International Office.

During the debate on the above provisions various delegates insisted upon the principle of equality between arms producing and non-producing States.²³ The present convention requires publicity only in regard to the export and import of arms, and not in regard to manufacture. The producing States are not obliged to import arms and hence their military equipment escapes the supervision and publicity to which the arms of importing States are subject. To correct this inequality certain delegates believed that the convention in regard to traffic in arms should be accompanied by a convention in regard to arms manufacture; and Mr.

18. Dr. Guerrero of Salvador raised the interesting question of how to define a government. Could one country supply arms to a legitimate government, and another supply arms to a *de facto* government, both claiming authority in the same country? He proposed a declaration to the effect that the right of acquiring war material belonged only to legitimate governments. *Proceedings of the Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War*. A. 13. 1925 IX (hereafter cited as *Proceedings*) p. 179. One draft provided for the recognition of a government by half the contracting powers, a number which was subsequently reduced. This interesting experiment in the principle of collective recognition was, however, dropped. Cf. *Proceedings*, p. 534, 590.

19. While for purposes of this discussion, arms may be divided between those for military and those for non-military purposes, the convention divides them into five categories. Aircraft forms a special category and may be freely exported and imported. Those arms capable of use both for military and other purposes form another category. They may be exported only under cover of an export document; but authorization from an importing government does not have to be obtained unless required by its legislation.

20. Under certain circumstances war arms may be exported to individuals or rifle associations, but in each case the export must be authorized by the government of the importing territory.

21. Article 33.

22. Estonia, Finland, Latvia, Poland and Rumania were allowed to make reservations whereby they may suspend the application of their obligation to publish statistics in regard to war arms, until the accession of Russia to the present convention. (Article 29).

23. *Proceedings*, p. 137.

Burton declared that the United States was in favor of a convention providing for complete publicity of manufactures as well as exports and imports.²⁴

In order to satisfy the demand for equality, the convention provides (Article 6) that the system of publicity in regard to the trade in arms is a "preliminary to a general system of publicity for armaments irrespective of their origin." The final act of the conference also declared that "it is desirable that the international aspect of the manufacture of arms, ammunition and the implements of war should receive early consideration."²⁵

The third purpose of the convention of 1925 is to place under strict control, following out the principle laid down in the Act of Brussels, the traffic in all kinds of arms, whether for military or other purposes, in certain "special zones." A land zone is defined to include the continent of Africa (except Egypt, Libya, Tunisia, Algeria, the Spanish possessions in North Africa, Abyssinia and the Union of South Africa, together with its mandate, and Southern Rhodesia),²⁶ as well as the Arabian peninsula, the three Near East mandates, etc. A maritime zone is defined to include the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman.

The parties to this convention promise to require licenses for exports of all kinds of arms whether for military or other purposes, into these special zones. They promise to grant licenses only in case the authorities to which the articles are consigned are willing to admit them. A return of all such exports shall be published.

Moreover, within the maritime zone no native vessel of less than 500 tons may carry any arms or ammunition unless they belong to persons holding licenses. All native vessels must carry a cargo manifest and display the initials of the port of registration, and each party agrees not to authorize any native vessel of less than 500

tons to fly its flag unless the owners are nationals of the State concerned.²⁷

If the commander of a warship within the maritime zone of one of the parties believes that a native vessel under 500 tons is illegally flying a flag or is engaged in illicit arms traffic, he may stop the vessel and conduct it for trial to the nearest port of the government whose flag is flown. In case the vessel is adjudged guilty, the cargo or the vessel, or both, may be destroyed. But if the authorities find that the vessel has been irregularly detained, they may award it compensation. If the detaining officer contests the decision, the dispute shall be arbitrated.

Although the United States has in the past objected to the principle of search and seizure,²⁸ the provisions of this treaty will scarcely affect American interests since they can be applied only to vessels owned or commanded by the natives of countries bordering on the Indian Ocean. By virtue of an amendment offered by Mr. Burton, the United States, as a government holding no territory in this area, is relieved of all responsibility of enforcing the above measures in the maritime zone.²⁹ The treaty does, however, obligate the United States to restrict exports of arms destined for these zones according to the license system above described.

These special measures thus applied to the "special zones" have been established to prevent the abuses caused in the past when unlimited quantities of firearms have fallen into the hands of native tribes. In a single period of six months nearly 12,000 rifles, 290 pistols and over 2,000,000 rounds of ammunition were recently captured in the Persian Gulf and the Gulf of Oman. With these arms the inhabitants of these areas have, it is said, carried on the slave trade.³⁰

27. Cf. Annex II, Sec. II, paragraphs 2 and 3 of the Convention.

28. However, a number of "liquor" treaties have recently granted the United States that right in regard to vessels suspected of liquor smuggling, within one hour's distance of shore. Cf. Treaty of January 23, 1924 with Great Britain. United States Treaty Series, No. 685.

29. *Proceedings*, Article 27, p. 392, 396.

30. *Ibid.* p. 400. Persia protested against the inclusion of her territory within the maritime zone. (It had been excluded from the land zone.) She said it was an infringement of sovereignty and that the measures imposed upon native vessels would destroy her commerce. In reply it was stated that the Persian Gulf was part of the open seas; that the colonial territory of European States in this area was subject to the same measure of surveillance as Persian territory. Nevertheless, Persia withdrew from the Conference. *Ibid.* p. 378, 380, 401.

24. *Ibid.* p. 192.

25. *Ibid.* p. 109.

26. Liberia was excluded by virtue of Article 28 of the Convention. Cf. the letter of Liberia regarding its adhesion. *Ibid.* p. 798.

THE POISON GAS PROTOCOL

At the first meeting of the general committee of the Conference Mr. Burton of the American delegation expressed "the very earnest desire of the Government and people of the United States" to have the export of asphyxiating and poisonous gases prohibited by the Convention.³¹ Subsequently he declared that he had been authorized to state that President Coolidge would be glad to call a conference at Washington "with a view to the framing of a convention for the prohibition of the use of asphyxiating gas in war."³²

Various proposals were made in regard to poison gas, and the solution finally adopted took the form of a Protocol in which the parties declare that the use in war of asphyxiating, poisonous or other gases has been justly condemned by the general opinion of the civilized world; and that in so far as they were not already parties to treaties prohibiting such use they accept this prohibition and agree to extend it to the use of bacteriological methods of warfare.³³

In considering whether or not the United States should ratify the Convention in regard to the International Trade in Arms, the history of the convention should be recalled. The United States signed the 1919 Saint Germain convention and then failed to ratify. After four years it finally stated its objections to this convention. In order to remove these objections the League of Nations called a conference in 1925. The United States participated in this conference, and to meet its wishes all reference to the League of Nations was stricken from the convention.³⁴ Although usually treaties negotiated under League auspices are deposited with the Secretary-General, ratifications of the Arms Convention are deposited with the French Government.³⁵

31. *Ibid.* p. 155.

32. *Ibid.* p. 310.

33. *Ibid.* p. 77.

34. Except in Article 34 which provides that the convention does not affect the Covenant.

35. Article 37. Cf. also the *Proceedings*, p. 242. There was less difficulty than in ordinary conventions in adopting this article because of the fact that the text of the Saint Germain Convention, drawn up before the League was established, provided for deposit with the French Government.

The American delegation made at least a dozen amendments or suggestions in regard to the treaty, practically all of which were accepted, at least in modified form, by the other governments.³⁶ The United States delegation signed the convention, and the other governments therefore assumed that the objections previously expressed by the State Department had been removed. Nevertheless, three and a half years have gone by and the United States has not ratified the convention.

On December 9, 1926 the Poison Gas Protocol was discussed at some length by the Senate in open executive session. It had been considered in closed executive session at the end of the previous session of Congress, and hearings were held on it in November and December, 1926, the minutes of which have not been made public. In presenting the Protocol to the Senate, Senator Borah, as Chairman of the Senate Foreign Relations Committee, made a detailed speech giving the background of the instrument. He stressed the fact that it contained nothing not contained in the Five-Power Treaty of the Washington Conference, Article V of which prohibited the use of poison gases in war. This treaty was ratified by the United States Senate on March 29, 1922 but never came into force because of the failure of France to ratify it. This was due to the French dislike of certain clauses concerning submarines. France has ratified the Geneva Gas Protocol.

Senator Borah further quoted to the Senate an article from the February 7, 1923 Convention signed in Washington as a result of the Conference of Central American Republics which obligates the signatories not to use poison gas in war-time. Furthermore he pointed out that the Fifth Pan American Conference at Santiago, March 25—May 3, 1923, recommended that the governments "reiterate the prohibition of

36. *Ibid.* p. 150, 155, 184, 212, 223, 235, 240, 242, 251, 263, 269, 370, 381, 386, 398, 415. Mr. Burton originally proposed to allow the export of war arms to rifle associations, but when the dangers involved were pointed out, he accepted the imposition of restrictions upon his amendment. *Ibid.* p. 277, 279, 417. Moreover, his argument against the suspension of the publicity provisions of the convention by certain States until Russia's accession was not accepted. *Ibid.* p. 269.

the use of asphyxiating or poisonous gases and all analogous liquids, materials or devices, such as are indicated in the treaty of Washington, dated February 6, 1922."

The Senator from Idaho informed the Senate that the United States delegation to the Geneva Arms Traffic Conference had been instructed that the Navy Department "would desire to see an article inserted absolutely prohibiting international trade in asphyxiating, poisonous, or other gases for use in war." Senator Borah ended by saying that apparently this was found impracticable at Geneva and therefore the Conference dealt with the question by absolutely prohibiting the use of poison gas. The United States delegation cabled Washington and were instructed that "a declaration on the lines of Article V of the Washington Treaty . . . would be satisfactory" to the Army and Navy Departments. "The treaty, so far as I see it," said Senator Borah, "presents nothing new in the way of dealing with this subject other than that which we had when we passed upon the former treaty."³⁷

There followed a fairly long debate on the question, the opposition being led by Senator Wadsworth (New York) who contended that no prohibition of such a valuable military weapon could possibly be worth anything; that gas warfare was not any more cruel than other forms of war—if as cruel—and that its use was necessary to defend the United States. "Mr. President," said he, "if we ratify this treaty, in my humble judgment, we shall be doing one of two things. We shall be indulging in a hypocritical gesture or be inviting calamity to the Republic; for some day some power-

ful enemy of ours, confident that we will adhere to this convention, will take advantage of the fact, just as was done in April, 1915."

Resolutions were printed in the Record, which had been adopted by the American Legion, the Veterans of Foreign Wars of the United States, the Reserve Officers' Association of the United States and the Military Order of the World War. All of these opposed ratification of the Geneva Gas Protocol because its acceptance by the United States "would constitute a distinct backward step in our national defense."

On December 10, 1926 Mr. Borah read into the Record a letter from General Pershing stating that he had proposed the resolution of the Washington Conference on Poison Gas which was adopted unanimously:

"'Chemical warfare should be abolished among nations as abhorrent to civilization. It is a cruel, unfair and improper use of science. It is fraught with the gravest danger to noncombatants and demoralizes the better instincts of humanity.'

"I cannot think it possible," continues General Pershing, "that our country should fail to ratify the protocol which includes this or a similar provision."

Following this a long, detailed brief prepared by the American Legion entitled "The Truth About the Geneva Gas Protocol—America Should Reject It—Preparedness Essential to our National Security" was read into the Record by Senator Reed of Pennsylvania. Finally, on December 13, 1926, because of the opposition which had developed, the Protocol was referred back to the Foreign Relations Committee by Senator Borah and has not again been reported out.

THE SLAVERY CONVENTION

The 1919 Convention Revising the Acts of Berlin and Brussels did not, as we have seen, provide any concrete measures for the suppression of the slave trade in Africa, as had the Act of Brussels. It soon became evident that slave trading had not disappeared, and the 1923 Assembly of the League authorized the establishment of a

Temporary Commission on Slavery to study the question.³⁸

In its report to the Council³⁹ the Commission stated that some slave-raiding and trading still took place upon the borders of the Sahara Desert, in Abyssinia, in several

37. *Congressional Record*, Vol. 68, Part I, p. 141 et seq. Senate, 69th Congress, 2nd Session.

38. Article 23 of the Covenant obligates Members to undertake to "secure just treatment of the native inhabitants of territories under their control."

39. "Temporary Slavery Commission," A. 19, 1926 VI.

Moslem States in Asia and in Arabia. Allegations in regard to slave dealing had also been made in regard to China and Liberia. Secondly, the Commission found that in many tribes domestic slavery existed, ranging from the most abject servitude to a light form of serfdom. Finally, it reported that in most colonies governments had recourse to some form of compulsory labor for public purposes; and that in practice forced labor for private employers in some territories existed.

With the object of eventually bringing an end to these practices, the 1925 Assembly drafted a Slavery Convention which the Council transmitted to Members of the League and to other States for their observations. On May 17, 1926 the State Department of the United States replied to the Council that while it was "not in a position at this time to make any detailed contribution to a study of this subject" it was pleased to inform the League that "slavery and the slave trade are prohibited under the fundamental laws of the United States and by the laws and statutes in force in its several possessions. The Government of the United States is, furthermore, in accord with its traditional policy, deeply interested in any movement which looks towards the abolishment of all forms of involuntary servitude."⁴⁰

At the 1926 Assembly the Slavery Convention was signed by 36 governments.^{40a} Under this convention the parties undertake in their respective territories:

- (a) to prevent and suppress the slave trade.
- (b) to bring about progressively and as soon as possible, the complete abolition of slavery in all its forms.

The parties also promise to negotiate a General Convention in regard to the slave trade imposing upon them duties similar to those provided for in the 1925 Convention relative to the International Trade in Arms.

Finally, Article 5 of the convention provides:

"The High Contracting Parties recognize that recourse to compulsory or forced labor may have

grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labor from developing into conditions analogous to slavery."

It is agreed that:

"(1) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labor may only be exacted for public purposes.

"(2) In territories in which compulsory or forced labor for other than public purposes still survives, the High Contracting Parties shall endeavor progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labor exists, this labor shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the laborers from their usual place of residence.

"(3) In all cases, the responsibility for any recourse to compulsory or forced labor shall rest with the competent central authorities of the territory concerned."

This Article may be criticized on the ground that it does not, as in the case of the League mandates, limit compulsory labor to essential public works, nor does it require that such labor be paid. Moreover, it tolerates compulsory labor for private purposes until each government decides, at its own discretion, whether to abolish it. Nevertheless, the authors of the convention believed it desirable to frame a convention which could at once receive wide acceptance. Already as a result of the Slavery Convention, a number of governments, such as Abyssinia, Sierra Leone, parts of India, and Portuguese Mozambique and Angola have promulgated new legislation in regard to slavery, the slave trade or forced labor.⁴¹

Moreover, the opinion has been expressed that it is the function of the International Labor Office rather than of the League to study the question of colonial labor. In response to a resolution of the Sixth Assembly the Governing Body of the International Labor Office decided to undertake an inquiry into this question. A Committee on

40. *Replies of Governments A. 10. 1926, VI. p. 8.*

40a. For the text cf. *International Conciliation*, No. 236, January, 1928; Buell, *The Native Problem in Africa*, Vol. II, p. 954.

41. Cf. Goudal, "La Lutte Internationale contre l'Esclavage," *Revue Generale de Droit International Public*, September-October, 1928; Buell, "The Struggle in Africa," *Foreign Affairs*, October, 1927; Annual Report of the Council, A. 62, 1928. VI.

Native Labor of fourteen members including Professor Joseph Chamberlain of Columbia University, New York, has studied the question of forced labor with a view to the desirability of international regulation. In 1927 this committee passed a resolution stating that "all forced labor should cease at the earliest possible moment." In the meantime the duration of forced labor for an individual should not as a rule exceed 60 days per year. The committee was unanimous in declaring that forced labor should not be imposed for private enterprise. As a result of the work of this committee, the question of forced labor will be considered by the 1929 International Labor Organization Conference; and a new convention on the subject may therefore be drafted.

The United States was not a signatory of the Slavery Convention but has been invited to accede, and on May 22, 1928 the President forwarded the convention to the Senate for approval. As the State Department declared in its note of May 17, 1927 the convention does not contain any obligations which are not found in existing legislation in the United States and its possessions.⁴² On the other hand ratification would enable the United States to par-

ticipate in a movement upon a world-wide scale to wipe out slavery and forced labor. It would safeguard conditions of labor in many undeveloped areas where American capital has been and is being invested.

If the United States accedes to this convention, it must deposit its accession with the League Secretariat. In this respect the Slavery Convention differs from the other three conventions discussed. Nevertheless, while this provision recognizes the existence of the League, the mere deposit of accession gives the League no authority in regard to the execution of the convention or over the parties to it. In replying to its communications the United States has repeatedly recognized the existence of the League; it has signed treaties recognizing the League mandates and securing to the United States rights in the mandates guaranteed to Members of the League;⁴³ it now participates in League conferences; it has signed conventions which provide that ratifications shall be deposited with the Secretariat;⁴⁴ and the State Department has transmitted to the League Secretariat for publication in the League Treaty Series the text of conventions to which the United States is a party.⁴⁵

42. For a review of this legislation and court decisions, Cf. Warnshuis, Chamberlain and Wright, "The Slavery Convention of Geneva" *International Conciliation*, January, 1928, p. 23, 35. Despite legislation to the contrary the charge has been made that peonage still exists in the Philippines, Cf. Miss Catherine Mayo, *The Isles of Fear*, Chapter IV.

43. Cf. our treaties with France in regard to the Cameroons, Togoland, and Syria. *U. S. Treaty Series*, 690, 691, 695; with Belgium, *Ibid.* 704; with Great Britain, *Ibid.* 728, 743, 744, 746.

44. Cf. Article 15, International Convention for the Abolition of Import and Export Prohibitions and Restrictions of November, 1927. C. 559. M. 201. 1927. II.

45. Cf. the Convention between the United States and Belgium of December 9, 1925. *League of Nations Treaty Series*, 1928, p. 173, No. 1690; and Hudson, Manley O., "The United States and the Registration of Treaties," *American Journal of International Law*, October, 1928, p. 853.